

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	NO. 4:16-CV-469-K
	§	
ERIC TRADD SCHNEIDERMAN,	§	
Attorney General of New York, in his	§	
official capacity, and MAURA TRACY	§	
HEALEY, Attorney General of	§	
Massachusetts, in her official capacity.	§	
	§	
Defendants.	§	

**DEFENDANT NEW YORK ATTORNEY GENERAL'S
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

Defendant, Eric T. Schneiderman, in his official capacity as the New York Attorney General, by and through counsel, hereby moves to dismiss this case pursuant to Rule 12(b)(1), (2), (3) and (6) of the Federal Rules of Civil Procedure.

1. The New York Office of the Attorney General (“NYOAG”) issued an investigative subpoena to Exxon Mobil Corporation (“Exxon”) on November 4, 2015. The NYOAG issued the subpoena pursuant to N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law § 349(a), and N.Y. Gen. Bus. Law § 352(1)-(2). The subpoena requested documents that would allow the NYOAG to determine whether Exxon had made false or misleading representations to consumers and investors about the impacts of climate change on Exxon’s business operations and financial reporting.

2. On November 14, 2016, following an Order granting it leave to amend, Exxon served the NYOAG with a First Amended Complaint naming NYOAG as a defendant and asserting claims

against the NYOAG that the subpoena violated Exxon's constitutional rights, was preempted by federal law, and violated Texas law.

3. This Court should dismiss this case for several reasons.

4. *First*, this Court lacks personal jurisdiction over the New York State Attorney General in his official capacity. *See Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 482 (5th Cir. 2008)

5. *Second*, the Northern District of Texas is an improper venue because the events underlying Exxon's claims against the NYOAG occurred in New York.

6. *Third*, Exxon suffers no cognizable injury from the subpoena. *See Google, Inc. v. Hood*, 822 F.3d 212 (5th Cir. 2016).

7. *Fourth*, this Court lacks subject matter jurisdiction because abstention based on *Younger v. Harris*, 401 U.S. 37 (1971), is warranted here.

8. *Finally*, the Court should dismiss this case under Rule 12(b)(6) because the First Amended Complaint does not satisfy the minimum pleading standards of Rule 8(a)(2) by failing to state plausible grounds for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

PRAYER

For these reasons and those set out in the Memorandum of Law in Support of Defendant New York Attorney General's Motion to Dismiss the First Amended Complaint, the Court should DISMISS Exxon's First Amended Complaint as to the New York Attorney General with prejudice.

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of New York

By his attorneys:

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**pro hac vice application forthcoming*

s/ Pete Marketos
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Dated: December 5, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 5, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Pete Marketos
Pete Marketos